US Bankruptcy Court Rules on Extraterritorial Scope of Automatic Stay Arising upon Recognition of Foreign Main Proceeding

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The United States Bankruptcy Court for the Southern District of New York has issued an opinion in the chapter 15 proceedings concerning JSC BTA Bank ('BTA' or the 'Bank') regarding the extraterritorial scope of the 'automatic stay' of actions against the debtor and its property that arises upon recognition of a foreign main proceeding.[2] The court ruled that the extraterritorial scope of the automatic stay of in personam actions against the debtor that arises upon recognition of a foreign main proceeding is significantly narrower than that of the stay that arises upon the filing of a plenary case in the United States.[3] The court cast its decision as one based upon the statutory mandate to cooperate with foreign courts, but although the opinion is premised on arguably sound policy rationale, its holding departs from the plain language of the applicable provisions of the Bankruptcy Code.[4]

The 'automatic stay' in plenary cases under the Bankruptcy Code

United States bankruptcy courts are famous (or perhaps infamous) for exercising extraterritorial bankruptcy jurisdiction. Under US federal law, a plenary bankruptcy case under chapters 7 (liquidation) or 11 (reorganisation) may be commenced in the United States with respect to any entity that has property located within US territory, regardless of whether such entity's main assets and operations are located in another jurisdiction.[5] The commencement of a plenary bankruptcy case in the United States creates an estate comprised of essentially 'all legal or equitable interests of the debtor in property as of the commencement of the case … [and a]ny interest in property that the estate acquires after commencement of the case'.[6] Moreover, US federal law provides that the bankruptcy court has 'exclusive jurisdiction of all of the property, wherever located, of the debtor … and of property of the estate'.[7]

Thus, upon the filing of a petition for relief in a US plenary case, the debtor and its property are automatically protected by a worldwide 'stay' of acts (i) to enforce claims against the debtor that arose before the commencement of the case and (ii) against the property of the debtor or the bankruptcy estate (e.g., seeking enforcement of remedies, seeking to create or perfect liens, taking possession).[8] Bankruptcy courts enforce the stay by means of their power to hold creditors in contempt.[9] While foreign courts are often reluctant to give effect to US bankruptcy court orders holding foreign creditors in contempt for taking actions against a US debtor or its property in a foreign jurisdiction (especially in circumstances where the US court has

1 Evan Hollander and Richard Graham represented the foreign representative in ancillary proceedings under chapter 15 of the US Bankruptcy Code concerning JSC BTA Bank. The authors wish to thank White & Case associate Jack Heisman for his research assistance in preparing this article.
2 *In re JSC BTA Bank*, 434 BR 334 (Bankr. SDNY 2010).
3 In this article, we refer to full liquidation or restructuring cases under the US Bankruptcy Code under chapters 7 or 11 as plenary cases. By contrast, cases under chapter 15 of the Bankruptcy Code are said to be 'ancillary' to foreign insolvency or debt adjustment proceedings. See H. R. Rep. No. 109-31, pt. 1, 109th Cong., 1st Sess., 107-108 (2005). Cases under chapters 9, 12 and 13, while generally considered plenary, are outside the scope of this article.
4 11 USC §§ 101-1532 (the 'Bankruptcy Code').
5 See 11 USC § 109; see, e.g., *In re Yukos Oil Co.*, 321 BR 396 (Bankr. SD Tex 2005); *In re Global Ocean Carriers, Ltd.*, 251 BR 31 (Bankr. D Del 2000).
6 11 USC § 541(a).
7 28 USC § 1334(e).
8 11 USC § 362(a). United States bankruptcy courts have also recognised the extraterritorial effect of injunctions issued by non-US insolvency courts. See, e.g., *In re Artimm, S.r.l.*, 278 BR 832 (Bankr. CD Cal 2002).
9 See, e.g., *In re All Trac Transp., Inc.*, 306 BR 859 (Bankr. ND Tex 2004); *In re Carney & Sons Trucking Serv., Inc.*, 142 BR 497 (Bankr. MD Fla 1992); see also Fed. R. Bankr. P. 9020.

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exercised jurisdiction over a debtor with only limited contacts in the United States), US courts need not rely on the assistance of foreign courts to give effect to their contempt powers where the offending creditor maintains property within the United States.[10]

The 'automatic stay' in ancillary cases under chapter 15 of the Bankruptcy Code

In 2005, the United States adopted the UNCITRAL[11] Model Law on Cross Border Insolvency (the 'Model Law')[12] as chapter 15 of the Bankruptcy Code.[13] Subchapter III of chapter 15 introduces the concept of 'recognition' of a 'foreign proceeding'. A foreign proceeding, which is defined essentially as a non-US insolvency or debt-adjustment proceeding,[14] may be recognised as either a 'foreign main proceeding', which occurs when the foreign proceeding is pending in the country in which the debtor has the 'center of its main interests'[15] or as a 'foreign nonmain proceeding' when the foreign proceeding is pending in some other country in which the debtor has operations and carries out nontransitory economic activity.[16]

Among other things, recognition provides the representative of the foreign proceeding (the 'foreign representative'[17]) with access to courts in the United States, allowing the foreign representative to seek relief, particularly in the recognising bankruptcy court, in aid of the foreign proceeding.[18] Recognition of a proceeding as a foreign main proceeding generally entitles the foreign proceeding and the foreign representative to more deference from the bankruptcy court than is the case where a proceeding is recognised as a foreign nonmain proceeding, and the Bankruptcy Code provides that certain relief automatically arises upon the recognition of a foreign main proceeding that does not automatically arise upon recognition of a foreign nonmain proceeding.[19] For example, section 1520(a) of the Bankruptcy Code provides that upon recognition of a foreign main proceeding, the automatic stay 'appl[ies] with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States'.[20] The plain language of section 1520(a) makes clear that with respect to the debtor's property,[21] the scope of the automatic stay that arises upon recognition of a foreign main proceeding is limited to actions that relate to property located within US territory. The *BTA* court addressed the scope of the section 1520(a) stay of acts against the debtor itself (as opposed to the debtor's property).

The BTA case

BTA was the subject of a complex restructuring proceeding in the Republic of Kazakhstan (the 'Kazakhstan Proceeding'). The Bank's foreign representative commenced an ancillary case under chapter 15 in the United States primarily to obtain an order enjoining various actions that would not accord with the provisions of the Bank's restructuring plan, which was still under consideration in Kazakhstan at the time recognition was granted in the United States, and the effects of the restructuring under Kazakhstan insolvency law.[22] The foreign representative sought the protection of the automatic stay to prevent creditors from seeking to attach the Bank's assets in the United States, which primarily consisted of correspondent accounts in banks in New York.[23]

Prior to the opening of the Kazakhstan Proceeding, the Bank had borrowed money from Banque International de Commerce – BRED Paris, succursale de Geneve ('BIC-BRED'), a French bank with offices in Switzerland but without business operations in the United States apart from its own correspondent accounts with banks in New York through which the dollar-denominated loan proceeds were transferred and payments on the loan were received. The Bank defaulted on the loan, and BIC-BRED attached property of the Bank in Switzerland and the Netherlands and initiated an arbitration proceeding in Switzerland, seeking a determination of breach of the loan agreement and an award of damages. BIC-BRED also participated as a creditor in the Kazakhstan Proceeding.[24]

10 See, In re Cenargo Int'l, PLC, 294 BR 571, 577-78 (Bankr. SDNY 2003).
11 'UNCITRAL' is the abbreviation for the United Nations Commission on International Trade Law, established by the General Assembly in 1966 (Resolution 2205(XXI) of 17 December 1966), to formulate modern, fair, and harmonized rules on commercial transactions.
12 UN GAOR, 52d Sess., Annex I, UN Doc. A/52/17 (1997).
13 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub.L. 109-8, 119 Stat. 23, enacted April 20, 2005). The US version of the Model Law is codified at 11 USC §§ 1501-1532.
14 'The term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.' 11 USC § 101(23).
15 11 USC §§ 1502(4), 1517(b)(1).
16 11 USC §§ 1502(2), (5), 1517(b)(2).
17 'The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.' 11 USC § 101(24).
18 15 USC §§ 1505, 1507, 1509, 1521.
19 See generally 11 USC § 1520.
20 Note that unlike a in plenary case, the stay in an ancillary case is not automatic upon the filing but rather only 'upon recognition of a foreign proceeding that is a foreign main proceeding'. 11 USC § 1520(a). A stay may be granted as a matter of discretion (i) before recognition if 'urgently needed to protect the assets of the debtor or the interests of creditors' until the court rules on the petition, 11 USC § 1519(a), or (ii) after recognition of a foreign non-main proceeding. 11 USC § 1521(a).
21 No estate is created under US law in a chapter 15 case. *BTA Bank*, 434 BR at 345 (citing *In re Gold & Honey, Ltd.*, 410 BR 357, 373 n.19 (Bankr. EDNY 2009); *In re Pro-Fit Holdings Ltd.*, 391 BR 850, 863 (Bankr. CD Cal 2008)).
22 Verified Petition for Recognition of Foreign Main Proceeding and Request for Related Relief, *In re JSC BTA Bank*, No. 10-10638(JMP) (Bankr. SDNY Feb. 4, 2010) ECF No. 2.
23 *Ibid.*, at ¶ 65.
24 *BTA Bank*, 434 BR at 336.

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The foreign representative sought to prevent the arbitration from going forward and eventually brought a motion for contempt in the chapter 15 case against BIC-BRED for continuing the Swiss arbitration in violation of the automatic stay, asserting that the stay prevented BIC-BRED from continuing the Swiss arbitration to recover from the Bank.[25]

Arguments of the foreign representative and BIC-BRED

Although the foreign representative acknowledged that the chapter 15 automatic stay applies to property of a chapter 15 debtor only to the extent that such property is located 'within the territorial jurisdiction of the United States', he argued that no territorial restriction applies to the stay of acts or actions against the debtor itself, including prosecution of the arbitration proceedings. The foreign representative's arguments were based on the plain meaning and context of the statutory text as well as the legislative history of chapter 15 and the Model Law.[26]

The statute[27] reads in pertinent part as follows:

> '(a) Upon recognition of a foreign proceeding that is a foreign main proceeding
>
> (1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States …'

Two points of clarification on this passage are necessary to understand at the outset. First, section 362 provides for and governs the automatic stay in plenary cases.[28] Rather than adopt the uniform language of the Model Law,[29] the United States enactment simply imports the automatic stay from the general provisions of the Bankruptcy Code with a territorial modification.[30] Second, the definitions section of chapter 15 explains that the phrase '"within the territorial jurisdiction of the United States," when used with reference to property of a debtor, refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory'.[31]

The foreign representative's statutory analysis focused on whether the qualifying clause 'that is within the territorial jurisdiction of the United States' modifies only the phrase 'the property of the debtor' or also modifies the words 'the debtor'. If it modified both, the Swiss arbitration would clearly not be within the scope of the stay, but if, on the other hand, the territorial limitation modified only 'property of the debtor',[32] the scope of the stay of actions against the debtor's person would not be limited solely to actions within the United States.[33]

The foreign representative began with the grammatical argument that the words 'that is' indicate that the qualifier modifies only the phrase 'the property of the debtor', for if the legislature had meant the qualifier to apply to both 'the debtor' and 'the property of the debtor', it would not have included the words 'that is'. Instead, it would have merely written, 'Sections 361 and 362 apply with respect to the debtor and the property of the debtor [deleted text] within the territorial jurisdiction of the United States' or, to be clearer, it would have supplied commas around the words ', and the property of the debtor that is,'.

The foreign representative derived further support from subsection (b) of section 1520, which excepts from the chapter 15 automatic stay the commencement of actions in foreign countries to preserve claims:

> '(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.'

The foreign representative argued that this provision, which delineates certain limited actions that may be undertaken in a foreign country notwithstanding the imposition of the stay arising under subsection (a) of section 1520, clearly evidences that the stay arising under subsection (a) is intended to have extraterritorial effect. The foreign representative noted that subsection (b), which allows for the commencement of actions against a debtor *in a foreign country* in order to preserve a claim against the debtor, would be entirely superfluous if the stay arising under subsection (a) had no

25 *BTA Bank*, 434 BR at 339.

26 The foreign representative also argued that the court's recognition order, which specifically provided for application of the stay to protect the Bank worldwide, was plain in its meaning. The court, while allowing for the possibility of some extraterritorial application of the automatic stay in chapter 15 cases as described below, stated that it did not intend its order to reach acts to collect against the Bank as unconnected to the United States or property of the Bank in the United States as the Swiss arbitration. *BTA Bank*, 434 BR at 345 n.28.

27 11 USC § 1520.

28 11 USC § 362. (Section 361 defines the concept of adequate protection of security interests. 11 USC § 361.)

29 Article 20(1) of the Model Law provides:

> Upon recognition of a foreign proceeding that is a foreign main proceeding,
> (a) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
> (b) Execution against the debtor's assets is stayed; and
> (c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

30 H. R. Rep. No. 109-31, pt. 1, 109th Cong., 1st Sess., 114-115 (2005).

31 11 USC § 1502(8).

32 In every other place the statute uses this phrase, it modifies only 'assets' or 'property' of the debtor.

33 *In re Artimm, SrL*, 335 BR 139, 159 (Bankr. CD Cal 2005) ('The consequences of an order recognizing a foreign main proceeding are substantial. Most dramatically, the U.S. automatic stay, *in all its details*, applies immediately with respect to the debtor and property of the debtor that is located within the territorial jurisdiction of the United States.' (Emphasis added)).

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extraterritorial effect. Moreover, the foreign representative noted that the legislative history explaining subsection (b) explicitly states that while this section would allow an action to preserve the claim to be commenced, it 'would not allow for its further prosecution',[34] precisely what BIC-BRED undertook in continuing the Swiss arbitration proceeding after the bankruptcy court had recognised the Kazakhstan Proceeding as a foreign main proceeding.

The foreign representative also pointed to section 1528 of the Bankruptcy Code,[35] which addresses a bankruptcy court's power to extend stay relief outside the territorial jurisdiction of the United States upon commencement of a plenary proceeding after recognition of a foreign main proceeding:

> 'The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination …, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.'

The stay of actions against the debtor's *person* is not treated in section 1528, which addresses only the potential extraterritorial expansion of the scope of the section 1520(a) automatic stay with respect to the debtor's property, even though section 1520(a) specifically addresses the scope of the stay with respect to both the debtor and its property. The foreign representative argued that the fact that section 1528 addressed the expansion of the scope of the section 1520 stay only with respect to the debtor's property was further evidence of the fact that the section 1520 already had extraterritorial effect with respect to *in personam* actions against a debtor subject to a chapter 15 case ancillary to a foreign main proceeding.

The foreign representative also drew attention to two passages in the '*Guide to Enactment of the Model Law on Cross-Border Insolvency*' (the '*Guide to Enactment*'),[36] which was published by UNCITRAL to aid in uniform interpretation of the Model Law. Section 1508 of the Bankruptcy Code mandates that, '[i]n interpreting [chapter 15], the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.'[37] The legislative history to section 1508 states that '[i]nterpretation of this chapter on a uniform basis will be aided by reference to the Guide [to Enactment].'[38]

In the first passage, the Guide to Enactment indicates that Article 20 of the Model Law,[39] the prototype for section 1520 of the Bankruptcy Code, was meant to apply to 'international arbitration', though the Guide to Enactment acknowledges that 'it might not always be possible, in practical terms, to implement the automatic stay of arbitral proceedings. For example, if the arbitration does not take place in the enacting State and perhaps also not in the State of the main proceeding, it may be difficult to enforce the stay of arbitral proceedings.'[40] That provision of the Guide to Enactment describes the precise situation that the *BTA* court faced. The arbitral proceeding was not in the enacting state (the United States) or the state of the main proceeding (Kazakhstan). The foreign representative noted that the Guide to Enactment does not say that the stay is not applicable in such a situation but rather only warns that in such a situation the stay might be difficult to enforce, perhaps for lack of personal jurisdiction over the stay violator.

Second, the foreign representative noted that the Guide to Enactment specifically recognises that the stay arising in an ancillary proceeding might be more expansive than the stay arising in the foreign main proceeding.[41]

The clear message of all these texts, argued the foreign representative, was that the section 1520 stay is worldwide in its application to protect the debtor's person from acts intended to recover on claims being restructured or discharged. The foreign representative argued that the extraterritorial effect of the section 1520 stay furthered the objectives of chapter 15, including a 'fair and efficient administration of crossborder insolvencies that protects the interests of all creditors,'[42] and would serve to ensure that a debtor undergoing reorganisation proceedings will be able to focus their efforts in a single forum rather than wasting resources on piecemeal litigations in fora in multiple jurisdictions.[43]

For its part, BIC-BRED did not seriously contest the foreign representative's assertion that recognition of the Kazakhstan Proceeding as a foreign main proceeding resulted in an extraterritorial stay of actions against *in personam* actions against the debtor. Rather, BIC-BRED relied almost entirely on its argument that the bankruptcy court had no power to hold it in

34 H. R. Rep. No. 109-31, pt. 1, 109th Cong., 1st Sess., 115 (2005).
35 11 USC § 1528.
36 Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, U.N. Gen. Ass., UNCITRAL 30th Sess. U.N. Doc. A/CN.9/442 (1997).
37 11 USC § 1508.
38 H. R. Rep. No. 109-31, pt. 1, 109th Cong., 1st Sess., 109-100 (2005).
39 See text in footnote 29, above.
40 Guide to Enactment at ¶ 145.
41 Guide to Enactment at ¶ 143.
42 11 USC § 1501(a)(1)(B)(3).
43 Motion for Contempt and Stay of Arbitration Proceedings at ¶ 11, *In re JSC BTA Bank*, 434 BR 334 (Bankr. SDNY 2010) EFC No. 19.

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contempt, because its only contact with the United States was its correspondent account in New York, which it argued was an inadequate basis for personal jurisdiction over it under US law.[44]

The court's ruling

The bankruptcy court denied the motion for contempt, holding that no violation of the section 1520(a) stay had occurred. While the court agreed with the foreign representative that the statutory language of sections 1520(a) and (b) and 1528 indicated that the chapter 15 automatic stay must have at least some extraterritorial effect, it was troubled by the notion of a chapter 15 court becoming 'a global clearing house for resolving the right to proceed in an appropriate foreign tribunal against a foreign business enterprise that may have only insignificant contacts with the United States,' in the court's view supplanting rather than supporting the foreign main proceeding, a result it found at odds with the structure and purpose of chapter 15.[45]

The court began its analysis by noting that it is generally bound by the plain meaning of a statute.[46] The court understood section 1508's instruction to consider the international origin of chapter 15 to promote uniform application, however, as 'a license to depart where appropriate from the well-settled rule of statutory interpretation that a court should prefer specific provisions over the general when striving to uncover the meaning of a statute.'[47] According to the court, '[t]he international origins of chapter 15 is a dominant and consistent theme that underlines the specific provisions.' [48] Chapter 15 is 'predicated on the concept of international coordination and cooperation' and 'encourages bankruptcy courts to look beyond the shores of the United States for interpretive guidance.'[49]

The court looked to what it described as the 'most basic objective' of chapter 15, which 'is to foster the orderly administration of cross-border restructurings', and the prescribed order is one in which, looking beyond American shores, the debtor is subject to a plenary proceeding in its home jurisdiction.[50] Chapter 15 creates no estate, and a chapter 15 debtor is defined by reference to a foreign proceeding rather than a worldwide estate created under US law.[51] According to the court, the foreign representative's interpretation of the statute 'focuse[d] too narrowly on scanning words and ignore[d] the ancillary nature of chapter 15, the specialized definition of the word 'debtor', and the interpretive mandate of section 1508.'[52] The court's analysis makes the contrast between the territorial basis of its *in rem* jurisdiction in a chapter 15 case (based on the phrase 'within the territorial jurisdiction of the United States') with the universal *in rem* jurisdiction it exercises in plenary cases a 'source of clarity' in determining the scope of even the *in personam* effects of the chapter 15 stay, apparently because the court believed the concept of territorial jurisdiction to be the organising principle in promoting cooperation, coordination and legal certainty between the main and ancillary proceedings in respect of the same debtor.[53]

To give effect to the texts to which the foreign representative directed it, however, the court acknowledged that there had to be circumstances in which extraterritorial effect of the chapter 15 stay would be appropriate. In keeping with its general view that the territorial limits of the stay should be related to the property over which the bankruptcy court exercises jurisdiction, the court determined that the stay 'may extend to the debtor as to proceedings in other jurisdictions for purposes of protecting property of the debtor that is within the territorial jurisdiction of the United States.'[54] The possible existence of such circumstances was the reason, in the court's view, that the statute appears to allow for the chapter 15 stay to have extraterritorial effects with respect to the debtor's person.

The court also stated that its interpretation avoided what it characterised as the 'absurd results' of the foreign representative's reading, which would amount to a 'worldwide anti-suit injunction as to any proceeding against the debtor, regardless of subject matter'.[55]

Finally, the court found that 'principles of judicial restraint' supported an interpretation that would exclude proceedings like the arbitration proceeding between the Bank and BIC-BRED, where each partys' contacts and the dispute itself had little relationship to the United States, and that 'equitable concerns' arising from the 'last ditch' nature of the foreign representative's efforts to 'discipline one of the creditors of BTA Bank and block the efforts of BIC-BRED to improve its position relative to other creditors' militated against granting relief.[56]

The court made no finding as to the existence of personal jurisdiction over BIC-BRED.[57]

44 *BTA Bank*, 434 BR at 347.
45 *BTA Bank*, 434 BR at 336.
46 *BTA Bank*, 434 BR at 340.
47 *Ibid.*
48 *Ibid.*
49 *Ibid.*
50 *Ibid.*
51 *BTA Bank*, 434 BR at 341.
52 *BTA Bank*, 434 BR at 342.
53 *Ibid.*
54 *BTA Bank*, 434 BR at 343.
55 *BTA Bank*, 434 BR at 346.
56 *BTA Bank*, 434 BR at 347.
57 *Ibid.*

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Assessment

As the *BTA* court acknowledged, courts are generally 'bound by the plain meaning of the statute', though an exception applies in 'rare cases [in which] the literal application of a statute will produce a result demonstratably at odds with the intention of the drafters.'[58] The court found section 1520(a)(1) to be one of the rare statutes whose plain meaning would produce results it characterised as 'absurd'.

Rational minds may differ on the question of whether it is appropriate for a stay arising in a case ancillary to a foreign proceeding to have broader reach than the stay arising in the plenary proceeding in the debtor's home jurisdiction. Some may argue that an ancillary proceeding that provides for a stay of actions against the debtor in jurisdictions not subject to the stay arising in plenary case in the debtor's home jurisdiction serves a fundamental purpose of the Model Law as it facilitates reorganisation through forcing parties to resolve their disputes through collective action in a single forum, the 'place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.'[59] Others may argue that the application of a stay in an ancillary proceeding that is broader than the stay that arises in a plenary case in the debtor's home jurisdiction unduly impinges on the sovereign right of the debtor's home jurisdiction to determine the appropriate level of protection to afford companies reorganising within its boarders. The propriety of legislating a worldwide stay automatically emanating from an ancillary proceeding filed in the United States where no such relief has been obtained (or perhaps can be obtained) in the plenary proceeding pending in the debtor's home jurisdiction is certainly subject to question, particularly in instances where the debtor has little connection to the United States. It seems a stretch, however, to say that the plain meaning of section 1520(a)(1) leads to absurd results. Indeed, as noted, the legislative history tends to support the plain meaning.

The *BTA* court's rule that the stay extends to proceedings in other jurisdictions only when necessary to protect property of the debtor within the United States does not leave one satisfied that the legislative intent behind section 1520 has been discerned. First, it seems to load far more onto the words of the statute than warranted. The syntax of the statute is clear. Section 362, which generally has global effect, is given a territorial limit in chapter 15 cases, but there is nothing to clearly indicate that a territorial limit applies to the stay of acts against the debtor personally as opposed to property of the debtor. To reach the conclusion that there is such a limit and then to define it, the court has to go through a number of steps, none of which seem inevitable.

For example, section 1508's mandate on its face appears to be little more than a call for uniform interpretation across jurisdictions, not a reminder that ancillary cases play a supporting role to foreign proceedings.[60] In the instance of the scope of the section 1520(a) stay in respect of the Bank, the description of the Guide to Enactment of a stay of an arbitration pending in a country other than that of the foreign proceeding or the enacting state would appear to call for application of the section 362(a) stay via section 1520. The passages in the Guide to Enactment described above indicate the intended scope of the stay (at least in countries with extraterritorial stays) in respect of such an arbitration proceeding. There is nothing in these passages to indicate that the drafters of the Model Law had a territorial nexus limitation in mind.

Further, it is possible to interpret the mandate to cooperate that runs throughout chapter 15 as militating toward aiding the foreign representative in stopping a creditor that is attempting an end run around the foreign main proceeding even if the creditor is doing so across a border. Indeed, this would not seem an unusual or 'absurd' interpretation for a Model Law seeking 'fair and efficient administration of cross-border insolvencies that protects the interests of all creditors'[61] adopted by a country with a tradition of supporting universalism in insolvency administration.

It is also difficult to comprehend how the inclusion of the words 'the debtor' in section 1520 are to be given any effect under the court's interpretation of the statute. The court suggests the words would serve to provide extraterritorial protection in respect of a non- US proceeding involving 'a determination of rights of a third party in property of the foreign debtor that is within the territorial jurisdiction of the United States.'[62] But such a proceeding would be precluded by the provisions of section 1520(a) even if the provision did not include the words 'the debtor', as the statute would nonetheless serve to stay without territorial limitations all actions 'with respect to [deleted text] the property of the debtor that is within the territorial jurisdiction of the United States'. Thus, under the court's interpretation of section 1520(a), the separate reference to actions against the debtor (as opposed to its property) is entirely superfluous.

Although it is true that chapter 15 cases are ancillary in nature, it should also be borne in mind that one of the policies of chapter 15 and the Model Law is to encourage the use of ancillary proceedings as opposed to parallel plenary proceedings.[63] To the extent chapter

58 *BTA Bank*, 434 BR at 340 (citing US v. *Ron Pair Enters., Inc.*, 489 US 235, 242 (1989)).
59 Council Reg. (EC) No. 1346/2000, P 13.
60 H. R. Rep. No. 109-31, pt. 1, 109th Cong., 1st Sess., 109-100 (2005) (describing the goal of 'uniformity of interpretation' as 'crucial').
61 11 USC 1501(a)(1)(B)(3).
62 *BTA Bank*, 434 BR at 346.
63 This policy is embodied, for example, in sections 305 and 1529(4), which allow a bankruptcy court to dismiss a US plenary case in favor of a chapter 15 in respect of a foreign main proceeding concerning the same debtor.

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15 cases do not afford the desired effects, however, one could anticipate an increase in the filing of parallel plenary proceedings in the United States to trigger a worldwide stay of actions against the debtor, thereby significantly increasing the costs of administering multinational restructurings.

In the final analysis, although one can certainly understand that it might be awkward for a court in an ancillary case to impose an extraterritorial stay when the debtor's home jurisdiction does not do so, and while one can see some wisdom to following a policy of jurisdictional restraint in such circumstances, there is much to be said in the commercial arena for clear, transparent rules and predictable results. While other considerations may be dominant in the area of personal liberties, parties in commercial life will adjust their transactions to the rules that exist in order to efficiently order their affairs according to the risks each party is willing to bear. Risk calculations are difficult in cross-border transactions, but they are helped when a plain reading of the applicable statutes is regularly given effect.

Conclusion

At the least, one can say that the *BTA Bank* case signals that courts are uncomfortable in applying the section 1520 stay extraterritorially in circumstances in which there is little connection to the United States. Whether another court will adopt the *BTA Bank* rule, however, remains to be seen.

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